IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	:	Scott C. Harris	Group Art Unit 3693
Appl. No.	:	10/064,439	
			Confirmation No. 2498
Filed	:	July 14, 2002	
For	:	WEB BASED COMMUNICATION OF INFORMATION WITH RECONFIGURABLE FORMAT	
Examiner	:	Fu, Hao	

REPLY BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant herewith files this reply brief responding to the Examiner's

answer dated April 28, 2011.

Since many of the issues have been fully briefed, applicant will simply refer

to specific issues in the brief on appeal.

First, on page 4, the patent office agrees that both Powell and Fisher do not explicitly teach the e-mail messages being in plaintext form.

See page 4 of the examiner's answer, and specifically

> Even though Powell does not explicitly teach using email in plain text and

and

> As per claim 2, Fisher does not explicitly teach wherein said e-mail messages include e-mail messages in plain text form.

Note also that claim 2 requires e-mail messages in plain text form.

The patent office attempts to argue based on Powell's technology being used to replace the special forms for executing desired action. However, this does not suggest e-mail messages in plaintext form, but rather only replacing those special forms.

Therefore, the teaching of this kind of plaintext comes from applicant specification, not from the prior art.

In addition, the statement in the reply brief, that *"One of ordinary skill in the art would have been motivated to combine the references in order to eliminate the need for specialized knowledge in the web."*, Page 4, third to last paragraph, end of the line is respectfully suggested to be a wholly improper basis for combining references, and is tantamount to hindsight. The patent office is not identified anywhere that the prior art shows the need to " eliminate the need for specialized

knowledge in the Web". This reason for combination is obtained only after having the benefit of applicants teaching. This is not legally correct.

For claim 6, in support of its reason for combining the prior art to render obvious claim 6, the patent office states that "one of ordinary skill in the art would have been motivated to combine the references in order to use plaintext to request desired action via email." However, it is respectfully suggested that this reason for combination is based on hindsight, since the stated reason for combination is to use plaintext -- the exact subject matter of applicant's own claim 2. This further demonstrates that the patent office has used applicant's own teaching as a guide for combining the prior art. This is legally improper.

For claim 9, the patent office states that Fisher's notification messages, which include the merchandise, current high bid and bid increment necessarily represents a session identifier. However, claim 9 requires that the session identifier be unique value that unambiguously represents an item in the auction. The patent office states that Fisher's invention must include this feature "in order to let bidder to place new bid on the correct item". However, Fisher puts together the merchandise information with current high bid and bid increment and does not call this a unique value. In fact, anyone who is bidding on the same item could get the

same value. The statement that Fisher "must" include this feature is based on the teachings and invention of the present application, and this rejection is wholly based on hindsight. For example, this could be a problem that Fisher never recognized. It is not proper to contend that Fisher "must" include this feature when the only teaching of this feature is in the present application.

For claim 12, applicant has the same position with regard to the session ID. Claim 12 requires that the session ID is a unique value, while Fisher's "information" is not disclosed to be unique.

For brevity, applicant will not repeat this argument, however this is applied against multiple different claims including claims 29-30 and others, and applicant has the same comment for each of these.

For claim 22, the claims should be allowable for reasons of record, and specifically claim 22 requires "determine automatically a desired action of said email without requiring a special form for the first email message to recognize said at least one word". On pages 6-7, the patent office agrees that neither Fisher nor Powell shows a key word recognition system of this type, but again attempts to combine these "for the purpose of eliminating the need for specialized knowledge in the Web". Again, this is an improper combination, and improper reason for

combination. Moreover, even if combined, this would not make obvious the subject matter of claim 22.

Claim 26 requires recognizing the specific word bid, which is one key to a recognition system of this type that does not require any special form. The patent office has never found anything that suggests recognizing the word "bid" in this way, and claim 26 should be additionally allowable. The reason for combination of the prior art is again based on the teaching of the present invention, which is wholly improper.

For claim 65, applicant has similar comments, specifically, this is not shown by the cited prior art, and the Examiner's attempt to combine the references does not use legally correct reasons for combination.

In the rejections of claims 3, 4 and 68 beginning on page 11, applicant has previously traversed the official notice. See for example, page 26, last two paragraphs of the amendment dated June 25, 2010. Under the MPEP, the Examiner must cite a reference in support of the official notice, once it was challenged. While applicant repeatedly traversed the official notice, such a reference was never cited. Accordingly, this rejection fails on its face.

MPEP 2144.038 states that in order for something to be taken as official notice, it must be " well-known", or to be common knowledge in the art it must be

" capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961))".

Applicant respectfully suggests that this is not the case here. There is no showing of sending messages of the type described in the present application over a cell phone. This produces a wholly new effect, and is not "capable of instant and unquestionable demonstration", and as such applicant respectfully traverses the taking of official notice in this instance.

Moreover, the MPEP makes it clear that it is never appropriate to <u>rely solely on "common knowledge" in the art without evidentiary support in the record</u>, as the principal evidence upon which a rejection was based.Quoting *Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697 ("[T]he Board cannot simply reach conclusions based on its own understanding or experience-or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings.").

Deficiencies of a cited reference cannot be remedied by the examiner 's general conclusions about what is "basic knowledge" or

"common sense." In re Zurko , 258 F.3d 1319 , 1385, 59 US PQ2d 1693,

1697 (Fed. Cir . 2001). Furthermore , the examiner's findings must

extend to all material facts and must be documented on the

record, lest the "haze of so-called expertise" acquire insulation

from accountability. In re Lee, 277 F.3d 1338 , 1345, 61 USPQ2d

1430 , 1435 (Fed. Cir . 2002).

On page 15 of the examiner's answer, the patent office contends that Powell and

Fisher could be combined because they both define replacing a human operator

with the key word recognition system. However, Powell is attempting to allow

remote versions of changes to an HTML site. This is not replacing a human

operator with a keyword recognition system, but rather is attempting to allow a

user to more easily interact with an integrated development environment. See

column 1 lines 37-50 of Powell, which states:

"Almost all computer programming, including web site

development and updates, is performed within Integrated

Development Envirouments (IDEs). These IDEs simplify

the programming process but are still very complex to use. 40

The user of an IDE must understand the programming

language being created or revised. Most IDEs include a full

pallet of software tools (even though a user rarely uses most of these tools) making

the IDEs cost prohibitive and complex.

Because of their complexity, significant training time 45

is usually required. A problem with IDEs is that even if a

user is familiar with the IDE, mistakes and unintentional

changes can be made, yet hard to correct. The above factors

cause almost any programming changes to be performed by

specialized personnel.".

This is not attempting to replace a human operator, but rather is attempting to change from one form of automation using a human operator to another form of automation using a human operator. In fact, there is no disclosure of how one would change the contents of an HTML page in Powell without some human operator getting involved.

Fisher's column 5 lines 18-22 describes how an electronic auction system does not require a human auctioneer. However this is an entirely different issue than the problem described in Powell -specifically see above- that even if the user is familiar with the IDE, mistakes and unintentional changes can be made.

For reason number 2, on pages 15-16, the patent office is attempting to read much more into Fisher than is actually disclosed. Fisher states that the human auctioneer is replaced by a computer. That does not mean that the computer automatically recognizes keywords in a message. With respect, the patent office attempts to use the applicant's specification as a guide to fill in the parts that are missing in the prior art.

Argument number 3 beginning on page 16, attempts to argue that Fisher's invention is " is required to have a session identification information in the noticifacation email". (See page 17, first paragraph). That conclusion comes squarely from the teaching of the present application. There is nothing in the prior art that shows this. The only way that the Examiner can make this conclusion is based on the teaching provided by the present application.

Argument number 4 beginning on page 17 again argues that the session ID is necessary. Again, applicant believes that the reason this is concluded by the Examiner is based on the teaching of the present application. The prior art does not conclude such a unique session ID is necessary, but the patent office, once having the benefit of the present teaching, does in fact make that conclusion.

Therefore, the conclusion, and the teaching, is based on the teaching of the present specification, not based on the prior art.

Argument number five, page 18, attempts to contend that since cell phones were known to send and receive e-mails, that the official notice covers bidcommands written in plain text. Again, the official notice has been respectfully traversed. The patent office's continued reliance on official notice after the traversal is clearly contrary to MPEP 2144.03C.

For each of these reasons, the undersigned respectfully contends that the rejections are legally incorrect and that the Examiner's rejections should be reversed.

Please charge any fees due in connection with this response, (excluding those concurrently paid via EFS), to Deposit Account No. 50-1387.

Respectfully submitted,

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Claims Appendix

2. A system as in claim 8, wherein said e-mail messages include e-mail messages in plain text form.

3. A system as in claim 8, further comprising an e-mail pager, producing said e-mail messages.

4. A system as in claim 8, further comprising a cellular telephone, producing said e-mail messages.

5. A system as in claim 8, wherein said information determining part receives and translates a user ID and password as part of said email messages.

6. A system as in claim 8, wherein said information determining part automatically recognizes phrases that include the word "bid" in said email as one of said words and where said action is a bid on one said items for sale over the Internet.

7. A system as in claim 8, wherein said information determining part also sends e-mail messages indicative of information about said auctions.

8. A system, comprising:

a web server, producing a web page which is available on the Internet wherein said web server is a server that hosts auctions of items for sale and maintains auction bids for items for sale over the Internet; and

an information determining part associated with said web server which receives e-mail messages and obtains information from said e-mail messages, said information being in a form which can interact with said web page being produced by said web server;

wherein said information determining part having a keyword recognition system which recognizes at least one word in at least one of the email messages to determine automatically a desired action of said email without requiring a special form for the email to recognize said at least one word,

and wherein said information determining part also sends e-mail messages that include information about items in said auctions for sale over the Internet, on which items a user has been outbid.

9. A system as in claim 8, wherein said information determining part produces and sends messages which include a session identification indicator that identifies said auction information, and that where said session identification indicator is a unique value, that unambiguously represents an item in said auction information.

10. A system as in claim 9, wherein said information determining part detects a reply to a plain text message which reply including said session identification indicator, and takes action on a specified auction based on said session identification indicator.

11. A system as in claim 8, wherein said information determining part also sends e-mail messages indicative of actions occurring on said web page.

12. A system as in claim 11, wherein said e-mail messages include a session ID indicative of said actions where said session ID is a unique value, that unambiguously represents an item to be bid on.

13. A system as in claim 12, wherein said session ID is included as part of a return address in the e-mail message.

14. A system as in claim 13, wherein the session ID is used to interact with said actions on said Web page.

15. A system as in claim 10, wherein said action includes placing a new bid.

16. A system as in claim 8, wherein said keyword recognition system in said information determining part automatically detects a new bid amount as part of a sent message.

18. A method as in claim 22, further comprising sending a second e-mail that has instructions on a specific interaction with said web page.

19. A method as in claim 22, wherein said first e-mail includes information that requests specified information from said web page, and further comprising sending a response including said specified information.

22. A method, comprising:

producing a web page on a server that is connected to the Internet wherein said web page is a web page for a server that hosts Internet based auctions; and

receiving a first e-mail message on the server, which e-mail has instructions to interact with said web page;

on the server, using a keyword recognition system to automatically recognize at least one word in the first email message, to determine automatically a desired action of said email without requiring a special form for the first email message to recognize said at least one word,

wherein said at least one word comprises a word that instructs bid on an item on an Internet based auction; and

wherein said item is an item on which a user has been previously outbid.

23. A method as in claim 22, wherein said web page is an e-commerce site.

24. A method as in claim 22, wherein said web page is a web page for a server that hosts Internet based auctions.

25. A method as in claim 24, wherein said e-mail message includes a session ID indicative of an individual auction on said web page, where said session ID is a unique value, that unambiguously represents one of said individual auctions.

26. A method as in claim 22, wherein said keyword recognition system automatically recognizes phrases that include the word "bid" in said email as one of said words.

27. A method as in claim 26, further comprising replying to said first e-mail message with instructions to increase a bid.

28. A method as in claim 18, wherein said e-mail message includes session ID information that represents said individual auction on which said user has been previously outbid, where said session ID is a unique value, that unambiguously represents one of said individual auctions.

29. A method as in claim 28, further comprising replying to said e-mail message with said session ID information, and modifying a bid on said web page responsive to said replying.

30. A method as in claim 29, wherein said session ID is part of a return address for said e-mail.

31. A method as in claim 29, wherein said replying includes specifying an amount of a bid to be placed.

32. A method as in claim 22, wherein said e-mail message includes a session ID indicative of an individual item on said web page, and where said session ID is a unique value, that unambiguously represents said individual item.

65. A system, comprising:

a web server, producing a web page which is available on the Internet, wherein said web server produces a web page that hosts auctions of items for sale and maintains auction bids for items for sale over the Internet; and

an information determining part associated with said web server which receives e-mail messages and automatically determines information from said e-mail messages in a form which can interact with said auctions on said web page being produced by said web server;

wherein said information determining part having a keyword recognition system which recognizes at least phrases that include the word "bid" in an email message to determine automatically that a bid action is being requested by said email, and automatically provides information about said bid action to said web server, wherein said web server also accepts a bid based on said information about said bid action.

66. A system as in claim 65, wherein said information determining part and sends messages which include a session identification indicator that identifies said auction information, and that where said session identification indicator is a unique value, that unambiguously represents an item in said auction information.

67. A system as in claim 66, wherein said session identification indicator is included as part of a return address in the e-mail message.

68. A system as in claim 66, wherein said session identification indicator is included as alphanumeric information in the email.

69. A system as in claim 66, wherein the session identification indicator is used to interact with said actions on said Web page.

Evidence appendix

None

Related proceeding appendix

None